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Quality Assurance at the Provider Level: Integrating Law Office Approaches with Funder Needs

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Introduction

The challenges in producing consistently high quality legal services for needy clients are daunting. The partial successes described and analysed below derive from the author's thirty years as a legal aid lawyer, twenty-three as director of a staffed legal services provider, the Hale and Dorr Legal Services Center of Harvard Law School (the Center). The Center is unique in that it is a clinical teaching facility for Harvard law students. However, the educational philosophy of the Center is that students learn best in a realistic, fully functioning law practice setting. The Center is explicitly modelled after a teaching hospital where delivery of services and professional development are intertwined in an atmosphere of heightened scrutiny, study and experiment to identify best practices.[1] Therefore, the clinical education dimension of the Center's program does not diminish the relevance of its experience for other staffed, NGO providers, the dominant model of subsidized legal service delivery in the US.

Part One outlines the quality issues in legal services that has informed the efforts and strategies of the Center since its founding in 1979. Part Two describes and comments on the quality assurance program at the Center. The focus in this section is entirely from the provider

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[1] The evolution of what is now the Hale and Dorr Legal Services Center of Harvard Law School is described in greater detail in Charn, "Client Service and Legal Education: A Report on the Experience of Harvard Law School from 1972-2001," unpublished manuscript on file with the author, prepared for and presented at the "Pan-Pacific Legal Aid Conference: Multi-Dimensional Needs for Legal Services" December 6-7, 2001, Tokyo, Japan. Section Three of that paper elaborates the educational premises of the "teaching law office" analogous to the teaching hospital.

perspective. Part Three attempts to link the provider perspective with a funder or macro perspective. Such a linkage is crucial to assure quality, not only in offices with an internal excellence agenda, but throughout the delivery system. Moreover, the Center's experience suggests that without an external, funder based and resourced quality agenda, it is difficult to achieve consistent, high quality service at the local office level.

Part One ~ The Quality Problem in Legal Services

The founding of the Center was preceded by review of legal aid casework and dialogue with the staff of Legal Services Corporation (LSC) funded offices in several regions of the country. In addition, a much larger number of cases were reviewed from legal aid offices in Massachusetts where Harvard Law School students were placed for their clinical work. These explorations revealed the contours of quality problems and exposed some of the structural dynamics that jeopardize quality and productivity in legal aid work. The efforts at the Center to assure both high productivity and high quality outcomes for clients should be understood in the context of this analysis.[2]

The quality of casework evidenced in the file reviews and follow-up office visits[3] were described by Gary Bellow in "Turning Solutions Into Problems: The Legal Aid Experience."[4] The article remains the seminal piece on the "quality problem" in US legal services, although there was and continues to be disagreement both with Bellow's analysis and his conclusions[5]. In his article,

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[2] The predecessor of the Hale and Dorr Legal Services Center, the Legal Services Institute, was founded by Professor Gary Bellow and the author. See, Charn, *supra,* at 1.

[3] The case reviews were conducted between 1974 and 1978. The Center was founded in 1979. See, Bellow, 4 *infra*, footnote 7 page 109 identifying the source of the 750 files that were reviewed The 150 case files reviewed from outs9ide Massachusetts were provided to Bellow and myself in advance of a two or three day visit to the legal services program. We would typically request five or six files from several (three or four) areas of practice (e.g. landlord-tenant; family; benefits; employment and consumer). With research assistance, the poverty law of each jurisdiction was analyzed in advance to prepare for the file reviews. A similar approach was taken to reviewing approximately 600 files from the legal aid offices where Harvard students were placed for clinical work prior to the establishment of the Center.

[4] 34 NLADA Briefcase 106, August, 1977.

Bellow describes the casework in over seven hundred cases that were reviewed as, for the most part, characterized by, using his terms: [6]

- *Excessive routinization or "slotting"* – Client matters were pigeon holed into simple categories which dictated an unimaginative service "protocol," most often unwritten, but described by providers as "all that's possible."

- *Low client autonomy* - The lawyer's relationship with clients was dominated by this excessive routinization with little evidence of dialogue or open-ended exchange.

- *Narrow definitions of client concerns* – Typically, only issues presented by the client received attention. Other matters, even when mentioned by the client, were understood as "tangential" or "another matter" and so not pertinent to the case at hand. For example, a divorce matter was just that, even when debt burdens were a source of marital discord.

- *Inadequate outcomes* – Settlement dominated outcomes, with staff recalling few or even no matters resolved by judgment or negotiation *after* trial. Nor did the vast majority of settlements reflect a discounted value of likely trial result, taking into account applicable law and the fact strength of the client's case. Rather settlements were justified as the best result in light of unsympathetic judges and aggressive or heartless opponents.

These case handling patterns were consistent across regions and variations in program size, staffing and other characteristics. Equally consistent was evidence of advocates' intelligence, dedication to legal aid work, and genuine concern for their clients' welfare. Thus, one must look to systemic constraints, dynamics and failures, rather than to shortcomings of the individual professional[7], to explain the discrepancy between the apparent capacity and commitment of staff and the outcomes evidenced in their casework. The following describes those features of the U. S. legal system, identified by Bellow in 1978, that continue to pose challenges to achieving consistent quality in legal aid practice.

Demand for assistance greatly exceeds resources – Perverse dynamics flow from the enormous mismatch between client demand and limited resources. Service dynamics might evolve as follows: chronic under-resourcing requires advocates to decline most requests for help.

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[6] *Ibid,* p. 55-56

[7] This is not to suggest that there were not instances of poor performance by individual advocates. The inadequate aggregate outcomes resulted the work of individuals. However, individual performance varied little despite varying levels of experience, extent and quality of training, prestige of degree, writing and analytic skills and other typical indicia of professional competence or capacity.

Compassionate, dedicated but inexperienced[8] advocates find this difficult and continue to take on cases, hoping to offer beleaguered clients at least a little assistance. As a result, caseloads creep up, quickly reaching levels where effective service to each client is impossible. With neglected cases sitting in file drawers, the next needy person in the waiting room captures the advocate's attention, compounding overload and neglect, producing burn out and eventual exit from legal aid work. In fact, high turn-over rates have characterized legal aid work in the US since its founding.

Neither U. S. legal aid lawyers nor their bar supporters have ever advocated a trade off of quality in order to afford some, albeit inadequate, service to a larger number of clients.[9] However, this norm emerges, de-facto, from the dynamics generated by the demand/need mismatch. Data maintained by the Legal Services Corporation since 1974 shows that, independent of funding levels, number of advocacy staff, or changes in the poverty rate, less than one quarter of cases closed by LSC grantees involve extended service.[10] Thus, the US legal aid system is dominantly an advice, limited assistance and referral operation.

To insulate advocates from the demand crush, many offices have located "intake", or first contact with people seeking assistance, in a separate unit. Also, the union movement in US legal services has sought caseload limitations.[11] Such efforts to insulate advocates and limit their caseloads made high quality work theoretically possible but absent attention to other powerful dynamics, the practice habits "learned" in the over-loaded situation too often continued in the case

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[8] It remains a common practice to assign novice advocates to the most routine service work or to "intake" and advice units.

[9] Such a rationale is not, and was not twenty-five years ago, consistent with the ethical norms of the legal profession in the US. Preferring the client in the waiting room to the client whose case is already in the office is an impermissible conflict of interest under the ABA's Model Rules of Professional Conduct, see Rules . See also, Bellow and Kettleson, "From Ethics to Politics: Confronting Scarcity and Fairness in Public Interest Practice" 58 Bos.U.Law Rev. 337 (1978).

[10] Rohit Singla, "A Preliminary Examination of the Legal Services Corporation's Performance" (1998), unpublished student paper on file with the author. See also, Annual Reports of the Legal Services Corporation and recent data at www.lsc.gov.

[11] When addressed, whether by union contract or office decision, caseload limits tended to be uniformly imposed despite sharp differences in the degree of difficulty and time frames for resolution of different types of cases.

limited situation. In such a situation, there would be little or no improvement in quality accompanied by a decline in productivity![12]

Law schools do not prepare graduates to practice law, and no post graduate program fills the gap - A second systemic problem is the inadequate system of professional education and training for law practice in the United States. U.S. law schools do not purport to prepare graduates to practice law. The three-year post-graduate law degree can be achieved without attention to lawyer skill development (other than thinking like a lawyer) and without mentored introduction to professional practice. A course in professional ethics is required in all ABA accredited law schools, but evidence, trial practice and clinical practice courses are not. In the 1970s, the American Bar Association and some federal court circuits seriously considered imposing educational requirements (such as a course in evidence and/or trial practice) for admission to the federal bar, but these efforts were vigorously and effectively resisted by the law schools.[13] Clinical programs have been established but are offered as one of many choices in an ever-expanding curriculum after the first year.[14]

Apprenticeship, once a requisite for bar admission, is no longer required in any U.S. jurisdiction. This leaves the novice J.D. subject to whatever norms of practice prevail in her post-graduate employment. Some large firms, federal government and other offices have developed training programs for entry level lawyers as well as programs for continuing professional development, but there are no standards for such efforts, no research on the effectiveness of various

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[12] Singla, *supra* at 9. Singla's analysis shows that the total number of matters closed annually by LSC grantees has varied between appoximately a million and a million and a half since 1982. By comparison, the number of extended service matters has been remarkably constant, and low, varying in the low to high 200,000 range. During this time period, caseload limitations became more common in programs but with little increase in extended service representation.

[13] Robert Clare, "Incompetency and the Responsibility of Courts and Law Schools" 50 St. John's L.Rev.463. Clare reports that the President of the Association of American Law Schools told Clare in his capacity as Chair of the "Advisory Committe on Qualification to Practice Before the United States Courts in the Second Circuit" that "Even if you recommend that trial lawyers should have only a course in evidence, we will fight you to the death." id., at p. 465.

[14] See Jeanne Charn, *supra,* at 1; and Robert Stevens, Law School: Legal Education in America from the 1850s to the 1980s (1983) for the definitive history of the modern law school.

approaches, little collaboration on best practices, and no certification or accreditation to assure that all novice lawyers get at least minimal supervision and training.

Good training events and materials continue to be developed by legal services programs. There is also an impressive array of manuals and practice aids, though there are some problems with uniform availability and with assuring updates to reflect law and practice changes.[15] However, the supervision and mentoring that novices require to achieve competence is not consistently available. Busy legal aid offices have not retained many experienced lawyers (at least not in their service operations) nor are they likely to require that senior attorneys devote much time to mentoring and supervising inexperienced recruits. In a situation of high turn over, it doesn't seem sensible to allocate experienced casework resources to new staff. Of course the lack of supervision and professional development exacerbates the turn over problem, which in turn justifies the decision not to invest in mentoring. Thus, the novice must learn catch as catch can. Immersed in casework, with needy clients turned away on a daily basis, the novice is subject to the "teachings" of role and routine in her area of practice, the very roles and routines that the novice hoped to challenge or exploit to the benefit of her previously excluded clients.

Established interests shape practice norms and structures - A third difficulty is the power of established interests to define and disproportionately influence practice norms and routines. The novice legal aid lawyer is often assigned to the lower trial courts, public benefits bureaucracies and other agencies and institutions that process the claims and grievances of poor and working class people. Such courts are colonized by experienced insiders who, if they don't know the law know the ropes. The legal aid novice, fresh from the law school classroom and perhaps a moot court trial, appears in a landlord tenant session, for example, having researched the substantive and procedural law (not knowing that "equities" often trump rules) and having prepared a five minute argument on the merits of the client's claims (not understanding that if argument is allowed at all, it should be

[15] One of the most innovative efforts in the U.S. is Pro Bono Net, an NGO that produces on-line legal resources for pro bono and legal aid lawyers. In addition, there are legal resources available to the general public. See the ProbonoNet web site at www.probono.net. See also www.lawhelp.org/ny , a web site produced by ProBonoNet that allows access to materials detailed at the zip code or borough level for New York City.

less than a minute). In other words, the novice knows nothing about the actual operations of lower trial courts. Once in the session, experienced lawyers and clerks take the novice aside and let him how things are done, explaining why it is a waste of time to file "impractical" motions or that judges don't like technical, procedural claims that "only serve to delay."

In such courts and in understaffed, overworked benefits bureaucracies the novice legal aid lawyer learns to practice law. The dilemma is that the modes of practice he absorbs better serve the needs of established interests[16] than the needs of his own clients. Resisting the tacit and explicit pressures to cooperate in the institutional marginalizing of low-income clients requires skill and critical analysis. Both resisting *and* effectively advocating is even more difficult. Scarce resources, weak education and training, the absence of adequate supervision compound, making it likely that all but the most resilient and independent novices will capitulate and make their accommodations in ways that, at least to some extent, perpetuate their client's disadvantaged legal standing.

Direct client service is sharply distinguished from law reform and policy advocacy - While the above factors are beyond the immediate control of legal aid offices, providers continue to make the decision to separate service from law reform and policy activities. Bellow emphasized the negative impact of this common divide, stating:

> "[R]outinized case handling in legal aid practice receives validation from the widely held view ... that individual client service, although desirable, bears little relationship to efforts to use the law for political or social change. The notion that has prevailed generally in the program is that reform, at least insofar as it is sought by lawyers using legal skills, means rule change. ... The day-to-day complaints clients bring to the neighborhood offices --- against creditors, landlords, welfare workers --- are not considered fuel for political action or reform. On the contrary, "service" to clients is generally thought to be [a] simple, routine, often dull, effort. Thus, lawyers who do service work are thought to be quite justified in handling large numbers of cases and are not expected to raise "test case issues" or spend too much time on any particular case. Indeed, advancement and status in legal aid work often is associated with leaving such routine matters to the younger lawyers for work on specialized litigation and other "law reform" efforts. ... [T]he conception of the legal problems of clients as capable of division between large (and political) "test case" claims, and routine (apolitical) grievances not only depreciates the importance of day to day legal aid work but actually fosters the very limiting perceptions of what can be done... [S]uch orientations take on a given matter-of-fact quality. For the new recruit, they are part of what must be mastered, understood and "known" to get along in a new environment. For

[16] Marc Galanter "Why the Haves Comes Out Ahead," 9 Law and Soc. Rev. 95 (1974).

the lawyer who has been around, they are part of the framework which gives professional life stability and regularity."[17]

Taking Bellow's analysis further, when the most able legal aid lawyers seek promotions to law reform units, the supply of capable supervisors for new recruits doing service work is further depleted. This is true even though the ratio of experienced to inexperienced advocates in the program, as a whole, has not changed. Lawyers eager for challenge, who don't have the opportunity to "move up" to policy work, may leave the program, fuelling subsequent turn over by those left behind who, having lost another colleague, now are unsure whether they should stay.[18] The opposite decision, to stay in service work, is viewed by both law reform and service types as a decision to forgo professional advancement. Those lawyers who choose careers in direct service will tend to be comfortable in straightforward routines, to seek security and predictability rather than professional challenge. They will be all too ready to accept, even embrace, the view that service work may not produce much by way of legal outcomes[19] but other important goals may be met such as helping clients find their voice, empowering clients to see the unfairness of "the system" or simply bearing witness to client struggles.[20]

These structural features, and others, constitute a complex of mutually reinforcing dynamics that militate against high quality service work. Often the advocates in a legal aid program shaped by such forces do not perceive the extent to which this has occurred. The suggestion, even the demonstration in case after case, that many everyday legal problems of low income people are complex and challenging, that they require a broad range of lawyer skills to bring to successful

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[17] Bellow, *supra* at 4, p. 119

[18] See Jack Katz, Poor People's Lawyers in Transition (1982) for a fascinating account of how law reform work evolved from a strategy, one among many, for aggregate change to an end in itself.

[19] To the extent that this group includes those who doubt their choice of a law practice career, the devolution of skilled advocacy to a helping service with modest horizons is welcome and further compounds quality issues. Legal aid service work can become a refuge for those who don't want to practice law but find satisfaction in helping people.

[20] William Simon, "The Dark Secret of Public Interest Lawyering: A Comment on Public Interest Lawyering in the Post-Modern, Post-Reagan Years" 48 U. of Miami L. Rev. 1099 (1994). Simon critically examines what he sees as the displacement of distributive and systemic change goals with a vague and internally contradictory client empowerment agenda.

conclusion, is received with scepticism. Defensiveness or hostility may emerge because to entertain this possibility would require questioning and ultimately rejecting the routines that define the service advocate's "expertise" as a poverty lawyer as well as much of the justificatory apparatus that sustains both the career law reform and the career legal services lawyer.

None of the above should be understood as descriptive of the all or most of the US legal services program.[21] There may be a great many, some or only a few offices that function as described. There is no data or information that would permit any judgment to be made about the overall quality of legal work in US programs. Moreover, even if high functioning as well as weaker programs were identified, there is presently no system for exporting best practices to weaker offices or for any other interventions that would set the weaker performers on a path to improved work.

What the analysis does suggest is that there are dynamics that drive legal aid practice away from quality. The talent and commitment, even the well-developed skills of an individual advocate, are not likely to be sufficient to sustain quality practice in the face of these dynamics.[22] Training and professional development, the paradigmatic professional response, will be insufficient to assure consistent quality in an office or in the larger legal aid scheme. Systemically generated tendencies towards declining quality cannot be reversed one lawyer at a time. Every individual accomplishment will be swamped by the larger dynamics. Specific programs and structures will be required to counter the negative dynamics external to legal aid, while structural changes will be

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[21] Jeanne Charn, "A Comment on the Current State of Government and Charitably Funded Legal Services for the Poor in the U. S.," discussion paper prepared for the International Legal Aid Group Conference, Melbourne, Australia, June 13-17, 2001. Part II of this paper discusses the evidence in available data that quality issues may be common. In addition to indications of low productivity and the dominance of limited assistance over more extended representation, LSC case outcome data provides no information about substantive results. In a program concerned with quality one would expect to know, for example, whether disability cases were won or lost; whether tenants retained possession in eviction actions or were rendered homeless; whether custodial parents received appropriate child support (determined by formula in some jurisdictions).

[22] Suppose a legal aid program hired a skilled lawyer defecting from private practice. Assume that this attorney has skills, commitment and energy in abundance. However, if the office has no litigation budget, no investigators, no law clerks, no relationship with experts, a poor case management system and a deeply and sincerely held conviction by staff that the legal system doesn't offer much to the poor, our new recruit will have a rough time.

necessary within programs to reverse self-generated and sustained negative dynamics. It was with such plans and great optimism that the Legal Services Institute, predecessor of the Hale and Dorr Legal Services Center, began seeing clients in January 1979.

Part Two~ Quality Assurance at the Provider Level: The Experience of the Hale and Dorr Legal Services Center

What follows does not attempt to narrate the stops and starts or the details of failed efforts to put in place a comprehensive quality assurance program at the Hale and Dorr Center. Unless specifically indicated to the contrary, all of the approaches described below were in effect for a year or more, though not all are presently in operation. However, enough details are provided to paint a picture of the scope of an office wide quality assurance effort in a mid to larger size legal aid office.[23] Casework quality at the Center is much improved in the past decade. Most work is what Paterson and Sherr would term "competence plus," with as many examples of "excellent" as "threshhold competence".[24] Quality in results for clients is achieved by attention to practice systems, cumulative outcomes for clients, and annual, multi-faceted performance reviews of all staff and practice departments. (Students receive performance reviews at mid-term and at the end of the semester.)

The following describes key components of the Center's quality assurance program, identified in two main categories, "practice systems" which relates to practice structures and support and "professional performance" which encompasses quality of case outcomes, peer review

[23] The Center's annual budget will approach two and a half million dollars in the 2002-2003 academic year. In 2002-2003, Harvard Law School will provide about $2.1 million to support Center operations. Earnings from client co-payments and attorney's fees awarded pursuant to statues should be in the vicinity of $140,000. There is an additional $260,000 in contracts to provide legal services. These funds support nineteen lawyers and paralegals, an associate director, case manager, office manager, receptionists and translators. In addition, each semester, eighty or more law students will practice at the Center for clinical credit or in satisfaction of the Harvard's new, mandatory pro bono graduation requirement.

[24] Alan Paterson and Avrom Sherr, "Quality legal Services: The Dog That Did Not Bark" in Francis Regan, Alan Paterson, Tamara Goriely, and Don Fleming, The Transformation of Legal Aid: Comparative and Historical Studies (1999).

of casework, client and student satisfaction, and the level pf professional development of advocacy staff..[25]

Practice Systems

Practice systems do not produce quality practice,[26] but the components of a practice system, and their interconnection, generate dynamics that either favor or militate against quality service. In light of the analysis in Part II, careless design of office systems and inadequate practice support run the risk of reinforcing the dynamics that undermine quality. The separation of service and law reform activities could be understood as an example of poor system design. Good system design maximizes opportunities to counter negative dynamics and to initiate virtuous counter-dynamics. Ideally, the components of an office practice system would seamlessly relate and reinforce one another. The system would remain stable over time. In reality, even a good system involves duplications, sticking points, and cul de sacs where cases can become lodged. Practice needs and circumstances change as well, requiring review and adjustment of the supports and processes that enable good work. Therefore, system design, revision and monitoring must be incorporated as an on-going function of any good law office.

Practice Support - Quality practice requires a variety of readily accessible supports, commensurate with the size of caseload and level of quality targeted. The following exemplifies the type of supports and inputs essential to a high quality law practice: (i) systems for conflicts checks; (ii) a litigation fund for depositions, expert witnesses, filing fees and other needs of proper case handling; (iii) regularly updated form and brief banks; (iv) a stable of reliable process servers, stenographers and commonly used experts; (v) translators if the client population is multi-lingual; (vi) client trust accounts and procedures for documenting and handling all funds expended on a case, and all funds received from or on behalf of a client; (vii) a law library and on line research tools; (viii) time-keeping systems where statutory attorneys fees will be sought; (ix) systems for

[25] See, Avedis Donabedian, "A Primer of Quality Assurance and Monitoring in Medical Care" in Law Practice and Quality Evaluation: an Appraisal of Peer Review and Other Measures to Enhance Professional Performance: The Report on the Williamsburg Peer Review Conference, ALI-ABA(1987).

[26] Id., at 101; Paterson and Sherr, *supra*, 23 at p. 235.

collecting co-payments from clients (charged by the Center for most work); (x) systems for securing, retaining, and as needed, retrieving all closed case files; (xi) runners, clerks and couriers to assure timely filing of papers in court, service and other important errands. All these systems, and many others are in place at the Center. Most work well, while some would benefit from improvements. A characteristic of the Center's improved functioning is that when problems arise, they are examined, solutions proposed, and responsibility for implementation assigned.

Case management - There must be an excellent case management system that makes it easy for advocates to: complete required file forms; record standard client information and data; maintain a docket of legally relevant events; enter file notes for every important event, strategy and decision; catalogue and secure all original documents relating to the case; document the resolution of the matter and the reasons for the outcome; complete closing documents and submit the case materials for storage. In addition, there must be an updated record of all open cases in the office, their status and identification of the responsible advocate.

It is not possible to over-state the importance of a good case management system. The office docket and orderly files bear directly on client service. If a client calls with an emergency and their counsel is in court or on vacation or ill, it will be difficult for a colleague to respond if there is no case record. Cases that must be transferred when an advocate leaves the office are at high risk of neglect upon assignment to the replacement. It is always a chore to acquaint oneself with a matter that someone else began. It is a nightmare if the case file is incomplete and the prior advocate's strategies unknown or unintelligible. In addition to the importance of the case record for client service, file review by supervisors, a time consuming task under the best of circumstances (see below), becomes impractical if the case is poorly documented or missing key pleadings, documents or evidence. Office dockets (caselists) are a first stop for information on productivity and distribution of casework among the advocacy staff.

Put simply, if an office doesn't know who its clients are, who is responsible, what it has undertaken on their behalf, and what has been done or is underway, it cannot assure quality.

A major obstacle is that legal aid lawyers, like many members of the bar, are notoriously poor case managers. They view time spent on file notes as time away from client service. They assert that they alone are accountable to their clients, but with results not files. Efforts continue at the Center to make case documentation and management as painless as possible and to assure staff "buy in" to the important client service and quality values that are served. Staff suggestions for more efficient and effective case management procedures have often been adopted. At the same time, performance reviews emphasize compliance with case management standards and remedial action is taken when deficiencies are identified.

Technology – The Center has an excellent technology base, with computers for all staff and one for every twostudent seats (students are not scheduled full time so a computer is always available to those present). Besides on-line research, internet access, e-mail and basic office software, form files, model pleadings, standard case documents, standard letters, information sheets, etc., are available at the desk top. In addition, three years ago, the Center adopted an on line case management system. From first contact and decision on request for service to case closing, all file entries, documents prepared by advocates, and most standard case forms are entered in the computer and so available on line. This enormously eases maintaining the case record. The software also has standard report functions capable of producing up to the minute office dockets and other reports. Thus, when an advocate is asked to field a client emergency or cover for an absent colleague, case status information may be accessed at the covering advocate's desktop.

Quality/Quantity Committee – Responsibility for the Center's quality agenda is directed by the "Quality/Quantity" or "Q/Q" Committee which is composed of the managers of each of the five practice units and the Director and Associate Director of the Center. The Committee's title reflects its objectives: to increase both the quality and quantity of service provided. The Center's Quality Assurance, or better, "Quality

Enhancement" program,[27] was developed by the Q/Q which continues to monitor its functioning.

Committee members discuss productivity and outcome results at least quarterly, review and make changes in various practice supports and systems, and in all respects lead the office in continued innovation and improvement. An essential role of practice unit managers is to generate discussion of Q/Q agenda items among staff, to solicit input from staff on Q/Q proposals, and to encourage quality innovation by staff. In addition, Q/Q recommendations come to full staff meetings for debate and discussion, and sometimes for approval. The Q/Q structure has proved effective in maintaining open discussion (each practice unit has four or five staff including the managing attorney or paralegal, a size conducive to opportunity for full and effective input by all), while assuring a reasonably efficient and well-informed decision process.

Casework Protocols - Excessive routinization of case handling has been identified as problematic. It would be more accurate to say that simplistic routinization is problematic. The antidote to slotting cases into simple response patterns is not fully customized advocacy, but sophisticated case handling strategies that are consistently or "routinely" deployed. Center Protocols are not simply check lists that track the filing deadlines and stages of case progress.[28] They are attempts to set out strategies and tactics that have proved effective or that save time or conserve costs. They direct attention to opportunities to benefit a client and warn of pitfalls. Protocols are to the formal rules and procedure of a case what a detailed set of directions from an experienced guide is to a mass produced map of a terrain. For example, in landlord and tenant cases where conditions of disrepair are at issue, protocols require a photographic record of the sub-par conditions. The protocol further suggests an identical series of photographs at intervals of several weeks to show continuity or worsening of condition and so document failure to repair. In child support protocols, standard practice requires obtaining the opponent's wage records to cross

[27] Donabedian, *supra*, at 25, p. 100.

[28] In the Center's lexicon, the chronology of key dates in the procedure applicable to a case is recorded on the "docket sheet" in the case file. "Docket" also refers to and advocates list or "docket" of cases.

check opponent assertions of annual income. If the opponent refuses to release wage records, the procedural rules offer a deposition of the employer's business manager, an expensive and time consuming proposition.[29] An office protocol is to subpoena records to any interim court hearing. The subpoena costs less than twenty dollars while a deposition would cost over a hundred. Usually, upon service of the subpoena, the employer releases the records to avoid biding time in court. Thus for a fifth of the cost, the necessary documents are promptly available.

Practice Standards – Practice standards are guides or "To Do" lists applicable to specific tasks. For example, the Center has a practice standard for case documentation that includes both what should be recorded and what should not be recorded in case files. There is standard for assuring that cases are covered and advocates are reachable when on vacation. Another practice standard specifies the steps to be followed to assure that client's are protected when cases are transferred upon an advocate leaving the office.

Benchmarks – Benchmarks are outcome goals that advocates should aim for. *Qualitative benchmarks* are set by the best case outcome of its type obtained in the office or known to the office. For example, when the Center began work in 1979, the norm in Massachusetts was that in eviction for non-payment of rent cases, it was possible (with good work) to delay but not prevent dispossession. Similarly, it was possible to get a waiver of unpaid rent, but not a cash payment from the landlord (for disrepair pursuant to favorable statutes and common law). Our analysis of the law, in light of the age and condition of housing in low income Boston neighborhoods, suggested that tenants ought to win possession most of the time and that landlords would frequently be liable for damages that would exceed any unpaid rent. If a landlord in such circumstances insisted, in addition, on gaining possession of the apartment, and our client was able and willing to move, then the landlord should buy out the tenant's entitlement to possession.

[29] Discovery requests for documents from third parties are not permitted under US discovery rules. One must notice a deposition of a third party, even if little or no testimony will be taken and subpoena the relevant documents to the deposition.

Experienced trial lawyers in the office began handling non-payment eviction cases based on this analysis. In less than a year, the office produced a $10,000 cash settlement that compensated for conditions of disrepair and, in addition, bought out the tenant's right to retain possession. Not only did this case become a benchmark for the office as well as a validation of the strategy, it caused something of a stir in the landlord and tenant court and so operated as a benchmark in the Center's efforts to re-define typical court outcomes in disputes between poor tenants and their landlords.

Quantitative benchmarks relate to the number of cases that advocates are expected to close in a year. They reflect productivity measured by number of cases completed or "turned over." Legal aid offices too often assess their productivity in terms of "caseload" or number of cases for which each advocate is responsible at any given time. However, caseload ought not be confused with productivity. For example, Advocate A might be responsible for a very large caseload, say 100, while advocate B in the same unit might have a caseload of 25. It would seem that advocate A is much more productive, representing four times as many clients as advocate B. However, if advocate A closes only 30 cases in a year, and carries over the balance (many of which may have been dormant for several years) while Advocate B turns over 25 cases three times for a total of 75, it is quite clear that advocate B is much more productive as Advocate A even though B at all times had a lower caseload.

Benchmarks for annual case closings were set by asking advocates in each practice unit to look carefully at their past experience and propose a challenging but realistically achievable target These proposals were then discussed with the Q/Q committee and adjustments were made based on comparisons among practice areas. For example, advocates in trial intensive, conflict heavy landlord and tenant would be expected to close the fewest cases while advocates in limited assistance or purely transactional practices (wills and estates, real estate, small business) would be expected to close many more. A second adjustment was made for experience levels. A lawyer just out of law school would not be expected to turn over as many cases as a lawyer with ten years.

The Center also benchmarks for earnings from client service. Two of the Center's five practice areas have produced most of the Center's income from client co-payments and statutory fee awards. A third unit is beginning to make a larger contribution, while one unit cannot charge client co-payments or receive statutory attorney fees because of its source of funding. Thus earnings, in at least some practice areas, indicate productivity and, in the case of statutory attorney fee awards, a successful legal claim.

The extent to which individual advocates as well as practice units meet qualitative and quantitative benchmarks is a focus of performance reviews. However, because there are many reasons why targets might be missed or exceeded, divergence alone cannot be taken as a strong indicator of either deficiency or success.

"Intake," brief service and preventive advice are assigned to a single practice unit. – In the fall of 2000, a new unit assumed responsibility for responding to all requests for service, for assisting clients with informational or other brief service needs and for offering preventive law check-ups to all clients of the office. The goal is to protect specialty units from case overload and to make sure that clients are dealt with "holistically." Advocates in the new unit, known as the "General Practice Unit" or "GPU," are intended to function as GPs in medicine. They refer clients to specialists when needed, keep track of the progress of those referrals, check on legal "wellness" and serve as an ongoing contact and information point for the client.

It appears that the new practice unit does protect against narrow definition of client concerns and encourages client autonomy. The limited though, from the client's point of view, often valuable service available from this unit was not offered in the previous system where advocates from each specialized practice unit were on "intake" for, e.g., housing or family or employment matters several times a week. If someone came in with an issue that did not fall within the Center's practice areas, they likely were not helped even if their legal need was easy to meet.

However, the advocates in this unit now bear the full brunt of the demand/resource mismatch. The unit is as yet unsettled with regard to the structures, supports, protocols

and practice standards that will best serve clients. It is not clear, for example, that clients for whom no advocate is available benefit from a little advice and assistance if they have no choice but to proceed *pro se* as compared to proceeding *pro se* without such advice. If it were determined that no benefit followed from such counsel, then standard practice should be to highlight key dates and deadlines for the client and move on to the next matter. However, if an advised *pro se* client did better than one without advice, even if both fared worse than a client with an advocate, this form of limited assistance might be an effective allocation of resources. There are many similar issues that need experience based exploration in the GPU.

Professional Performance

Professional performance review at the Center relies on many components each of which offers a different perspective on the casework of each advocate and on the aggregate outcomes in each of the five practice units. The system is peer based in the sense that it is carried out by a co-worker who practices every day with the staff whom they review. But it also has a hierarchical dimension in the sense the colleague conducting the review is the "Senior Attorney" (in one instance "Senior paralegal") or unit manager.[30] The unit manager has authority to determine annual salary increases for unit staff and, in consultation with the Director, to make contract renewal and other retention decisions. Thus the Center's approach to peer review blurs what, in the management literature, is often seen as a sharp distinction between the judgment/evaluative dimension of performance review and the helping/collaborative dimension.[31] This is a difficult straddle that seems to be working because (i) Center staff accept the basic concept of performance

[30] Previously, the annual performance review was conducted by the director, but it was difficult to undertake a comprehensive review and detailed write up (20 or more pages each of scaled assessments and narrative comment) for eighteen to twenty staff. Five years ago, the management structure was changed and a manager for each practice unit was named by the Director. With no more than 5 or 6 staff in any one unit (depending on variations in staffing patterns), the annual performance reviews and write- ups can be completed on a timely basis.

[31] Gregg Krech, ed., "Systems for legal Services: A Steb-by-step Guide to Palnning and Development for legal Services Programs" Legal Services Corporation (1980).

review; (ii) practice units are small enough for all staff to know each other well; (iii) there are many opportunities for collaboration, support and back up among unit members in which the manager's role is no different than that of staff; (iv) the experience level of managers is high (in every instance fifteen or more years) and their productivity, skill and case outcomes are also high.

The components of the professional performance system include the following:

Quarterly and annual closed case reports – The Center's service year runs from June 1 to May 31. Outcome data reports for every matter, standardized by case type[32], are requested on a quarterly basis and are required at the close of the Center's service year on May 31. Quarterly reporting permits the Q/Q Committee to review productivity and asses the extent to which units are on target to meet or exceed target goals.

Staff are strongly encouraged to meet Quarterly reporting deadlines in order to stay current on case closings and outcome reports. It is common in legal services work for advocates to complete service but neglect file closing for months or even years. Thus, annual case closings do not reflect work actually done in the relevant period. National LSC data is no doubt plagued by such problems. At the Center, the fact that all advocates have annual productivity goals reinforces the annual case-closing deadline. This, together with the fact that unit managers practice with staff and so know the cases their staff are working on, keep the Center in "real time" case reporting and annual productivity data.

Annual case file audits – A case file audit is a check of the record to assure that all required forms are in place (i.e. retainers, financial eligibility information); the date of last noted activity; and compliance with file keeping and documentation standards. Audits are carried out by a team consisting of the Associate Director and two or three non-advocate staff members on an annual basis. Every open file not previously audited is examined with results charted on a standard report form. Results are reported to the advocate, his/her unit manager, and the Director.

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[32] Reports are no more than two pages calling for standardized information with brief narrative comments at certain points. The data requested is the current best judgment of experienced advocates of the factors that impact substantive outcomes of various types of cases.

Audits have uncovered compliance problems, which tended to correlate with substantive advocacy problems. When audits identify case management problems, the Associate Director consults with the advocate to devise a plan to bring advocate the advocate's files into conformity with Center practice standards. A second audit might be scheduled within months to check and, depending on the nature of the problem, a substantive review of a sample of cases might be scheduled.

Limited and extended case review – Each year, the practice unit manager reviews all completed cases, and at least a random sample of the open cases for every advocate the unit. Advocates my select for review additional files that they believe reflect their general work or their best work. They may also select files on which they would like advice. If problems are identified, a review of every open case on the advocate's docket would occur (extended case review). Such an extended case review is conducted annually for less experienced staff. If problems are identified, follow up might involve any or all of such things as: actions to address immediate needs; consultation with the advocate about perceived problems; scheduling of a follow up review; offer of training; co-counselling on or direct supervision of some or all cases.

We have confidence in case file reviews by experienced advocates as strong indicators of the quality of an advocate's legal work. This confidence has a basis in analysis and a basis in experience. First, the analysis: every area of practice has a structure rooted in the law, the actual functioning of relevant legal and other institutions, and the social and demographic characteristics of the client base that produces the "facts" of each case. Thus a social security, or divorce or eviction or consumer case is not distinct from all others. There are always some unique features as well as the occasional outliers, but these are more variations, often subtle, on a theme than an entirely different tune.

As discussed above, good practice involves deploying sophisticated protocols to complex but patterned situations. Case file material clues the reviewer into the variations on familiar presenting patterns in the particular area of practice under review. A good advocate will be able to estimate achievable results (or result range). In reviewing the case, the skilled practitioner looks

for the discrepancies and convergences between (i) what he or she would have obtained as a result in the case and what the advocate achieved, and (ii) what he or she would have done in the case and what the advocate did. The more convergence, the better the work, the more divergence, the weaker the work.

The basis for confidence based in experience arises from a process of file review employed at the Center in an earlier period. The review process was as follows: Gary Bellow, the author and one other experienced lawyer (the third reviewer varied) made up a review team. The process began with a meeting of the three reviewers, before any files had been looked at, for a general discussion of good outcomes and approaches in the substantive area at issue. There was usually convergence of view. Following this preliminary meeting, twenty to thirty files, randomly selected from the advocate's docket of active cases, would be divided equally among the reviewers. The files would then be passed once among the reviewers so that each would have looked at two-thirds of the files under review. Before the review team met a second time, each reviewer made notes on his or her assessment of the strengths and weaknesses evidenced in the files, noting examples from files in support of his or her assessments. The review team then reconvened and before any discussion, presented, in turn, their assessments. The assessments were, in almost every instance, substantially similar for all three reviewers. This was followed by a more detailed discussion among the reviewers that produced consensus on some issues more tentative consensus or conclusions on others.

Following the review, the team would meet with the advocate to discuss their findings. Most advocates found the substance of the team's assessment to be accurate whether findings were generally positive or identified important negatives. In a period of five or six years of annual file reviews, there were four or five staff members who sharply disagreed with negative findings by the review team. The advocate was afforded an opportunity to offer information that might not be available in the file or for presenting for review other cases that the staff member believed to be better representations of his or her abilities. There was not a single instance in which an advocate

produced case files or additional information that supported a significantly different assessment than that of the review team.

Thus, case file review remains a staple of performance review. While time consuming, its value makes the effort worthwhile.

Client satisfaction surveys – Surveys are sent to all clients whose cases have been completed. Response rate has been good and clients report high satisfaction, including satisfaction with law student counsel. The relatively few negative responses have tended to correlate with similar concerns from clinical students, colleagues and support staff. However, client satisfaction or degree of satisfaction has not correlated with the results of case file reviews.

Client complaint procedure – A procedure exists to respond to client complaints. The Associate Director, or another staff member who is not an advocate, receives and documents the complaint and arranges for follow up coordinated by the Associate Director. Informal approaches are taken to resolve the complaint. If the client remains dissatisfied, the client is provided materials and information for making a complaint to the bar authorities. There are few client grievances, but they tend to correlate with similar complaints from students and office staff.

Confidential evaluations from students – Students complete a confidential evaluation of their practice experience and of their supervisor as part of required check-out from the Center at the end of their clinical work. They have the option of submitting the evaluation anonymously. These evaluations are received and reviewed by the Associate Director. They are provided to advocates in an aggregated form that protects student anonymity. Over the years, students have been consistently frank and professional in their evaluations. Negative comments have tended to correlate with peer reviews of casework, but positive comments do not. In addition to anonymous written evaluations, students are invited to a confidential focus group with the Associate Director. Student participation has been supportive and helpful, leading to constructive improvements in office systems and useful feed back to supervisor staff.

Annual written performance evaluation - In June and July of each year, unit managers compile the evaluative information available from all sources on each member of their unit. This

material, plus any observations of advocate performance at hearing, with clients, in negotiation, or in other dealings with opponents or witnesses, is the basis for the performance assessment. A written evaluation is completed on a standard instrument that includes main and sub-categories of performance. For every category, the advocate's performance is rated on a scale (attached). Narrative assessments are also included for each major performance category. The draft evaluation is provided to the advocate and a conference follows. A plan to address any problems is negotiated and the advocate's goals for the coming year are discussed. Any disagreements of the advocate with the manager's assessments are discussed are resolved if possible. If they are not resolved, the reviewee notes them in writing before signing off on the evaluation.

Self-assessment – Advocates are given the opportunity to complete the performance evaluation instrument as a parallel self-assessment, scaling their performance and commenting as appropriate. Advocates are also welcome to do a self-assessment in any other format that they choose. Only a few advocates have taken advantage of this opportunity for self-scrutiny.

Rounds - As part of its student program, the Center has developed a peer review process called "Rounds," modelled after medical rounds. A presenting student prepares a concise memorandum outlining a case and highlighting pending strategic, ethical or judgment issues for discussion. The memo is circulated to Rounds attendees (students and staff in the student's substantive practice unit) in advance and it is expected that participants will arrive prepared. The Rounds session involves brief opening comments by the presenter and then discussion and critical assessment of the student's handling of the case. The goals of Rounds are (i) to develop the skills of concise, pertinent presentation of a practice issue; (ii) to develop skills and habits of frank, critical exchange about casework; (iii) to develop skills in giving as well as receiving both positive and negative comment and assessment (the former turns out to be more difficult for most advocates than the latter); (iv) to improve casework; (v) to reinforce the value of collaboration and learning with and from peers.

Performance recognition – A characteristic of professional service organizations is flat hierarchies. In the professional service office, there are large numbers of educated staff, working

on complex and indeterminate matters, with high performance expectations. However, promotional lines are shallow. Equally important to the increased salary and career opportunities that often follow promotion, is the associated recognition of excellence and professional accomplishment.[33] Legal service organizations are complex in this regard, since advocates often espouse forms of egalitarianism and disinterest in (even disdain for) conventional forms of professional recognition and achievement. There is however, considerable evidence that those who labor outside the spotlight in fact desire community and peer validation and recognition.[34] The Center does not have a developed program in this regard, though there are informal validations and recognitions in the many public discussions of casework and practice accomplishments that take place at the Center.

Performance-based compensation - In 2000, a significant upward revision of the pay scale for lawyers and paralegals was sought and obtained. The new scale abandoned the prior step increase system, which functioned independent of performance. Such compensation systems are typical of NGO professional compensation systems, including legal aid (and many law schools). The new system is performance based, with larger annual percentage increases awarded depending on performance and the possibility of a pensionable bonus for outstanding performance. At this time, it is unclear whether the variable pay scale will play a positive role in reinforcing good performance or, in the case of lower increases, underscoring the need to improve. The range of pay variation is small, both in absolute terms and in comparison to private sector pay incentive systems, but it may turn out that it is less the dollars than the message associated with the variable pay scheme that matters.

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[33] It is common that long and outstanding service is eventually rewarded with promotion to a supervisory or management position. However, the skills and personal trait that made a great practitioner (e.g. trial lawyer, deal maker, brain surgeon, etc.) may not be the skills and personal traits that make a great manager of professionals and their organizations. Promoting someone for past accomplishments rather than likelihood of success in the new role risks quality in professional work.

[34] If we run through our mail, we are likely to have received one or two solicitations every month to attend a benefit recognizing the achievements of someone in public service or public interest work.

On the Agenda

The following are under consideration and will be discussed in the coming weeks and months at the Center as additions to or improvements on present Quality Assurance efforts:

"After care" information – The issue here is what are appropriate measures of good outcomes for clients. Certainly "winning" the case -- i.e. obtaining disability benefits; retaining possession in an eviction; averting a mortgage foreclosure -- can be understood as a good result. More telling, however, might be measures such as: was the client able to retain disability benefits for at least a year or through the next agency review? Was the tenant able to remain stably housed at least one year after resolution of the eviction? Similarly, was the homeowner able to stay up to date on the refinanced mortgage for at least a year after resolution of the case? To obtain such information would require an "After Care" unit with staff who would stay in touch with clients. Also, protocols would have to be worked out to explain to clients at the close of their case that there would be on-going contact and support to make sure they would really benefit from the legal work and to lay the groundwork for obtaining the desired information. This will certainly raise the issue of new legal matters arising as a result of on-going contact and what priority these would have to receive legal help from the Center. It may be that an important aspect of preventive legal work is some amount of on-going contact, support and "coaching" for clients to help them retain any benefits obtained or problems averted as a result of the original (often crisis provoked) assistance.

Cost benefit assessments – With an improved case data and outcome base it will be easier to determine the extent of benefit received by clients who receive various types of assistance at the Center, from full representation to pro se assistance to limited advice, to

referral to outside resources. If, over a period of time, we can demonstrate little benefit to clients, we should divert resources to areas where we can demonstrate that we are helping.

Standardized clients – Standardized clients are individuals who role play clients who present for service at the Center. Because they have been "scripted" with a prepared problem, the standardized client presents a "test" for the provider to correctly assess the clients issue and appropriately advise the client. This approach might be used as an "exam" for our students (this is done at Harvard Medical School) and for staff as well. The approach has been used in a major research project in Britain that compared quality of service from different providers on a number of case types.

Staffing patterns – The Center is experimenting with various staffing "mixes" in its different practice areas in order to come up with arrangements that optimize resources allocated; quality and quantity of service provided; and staff satisfaction and morale. For example, it may be that 12 to fifteen student volunteers, three recent JD graduate fellows; 4 or 5 long-term community volunteers; 2 experienced paralegals and 1 or 2 very experienced attorneys (one of whom might be part time) is the mix that produces the best outcomes, the most service and the greatest job satisfaction for all. The idea here is to reject the notion that, if resources were available, staffing decisions would be obvious: an office would hire the most experienced and expert attorneys available. Such an approach is not consistent with the range of legal needs, from straightforward advice, to simple matters to very complex and conflictual, that clients have in any area of practice.

Use of volunteers – The Center functions with large number of students working for academic clinical credit. We expect to experiment with volunteer law students who must now complete a pro bono requirement to receive their J.D.[35] The Center is the

[35] Clinical work counts to meet the pro bono requirement and always involves more time and effort on the student's part.

beneficiary of hundreds of hours of attorney pro bono time each year, primarily from the law firm of Hale and Dorr, but both the Center and the firm believe there are additional opportunities. Recently, a very productive relationship with SCORE (an organization of retired executives of small and medium sized businesses) has been established that benefits the small business clients of the office. This suggests that there might be other creative partnerships with volunteers.

Consequences to Date

There is evidence of improvement in both the quantity and quality of program performance since the introduction of a comprehensive approach to assuring quality. At the most basic level, we know a great deal more about what we are accomplishing in every annual service cycle. We are building a database that affords richer comparisons and more complex benchmarks for excellent performance. The quality program has in many respects been incorporated into the every day workings of the Center. The annual written performance evaluation remains an "event" but much of the basis for that assessment has become routine. There is an expectation by advocates of review and assessment and of management support and recognition for good practice. There is also a clearer understanding that remaining on staff at the Center requires consistent, strong performance.

Gathering the indicators of quality has turned out to be feasible once basic routines were in place. However, apart from the case file reviews and those practice system components related to making outcomes visible and goals explicit, it is unclear which components of the program are more important or whether much would change if we abandoned one or two. We do know that if a component is neglected (client satisfaction surveys fell into disuse for a period) it atrophies and no one seems to notice. We have found that it takes a great deal more time and effort to institute a component of the system than it takes for a component to disappear if neglected. The latter occurs in the blink of an eye! It does, appear, however, that a process that was once active and vital can be revived much more easily than invented.

It is not clear what "quality weight" (significance for quality outcomes) to attribute to components of the system. It may be that it is the whole, the experience in the office of a pervasive concern with outcome quality and efficient and effective service systems that has made a difference. Thus, it might be possible to have somewhat different components[36] with no difference in result, so long as there are enough plausible components to generate an atmosphere of quality concern.

Aside from the cultural and attitudinal impact that a pervasive system seems to produce, multiple components permit cross-confirmation of performance assessments, producing either greater or less confidence depending on how the indicators line up. Multiple assessment factors also make it likely that there will be evidence of success in some areas even if there are also indicators of problems. Because success motivates, highlighting areas of good performance may spur improvement in others.

Part Three ~ the Provider-Funder Connection

An important source of fragility in the Center's quality program is that it has no external validation or compulsion. No entity, institution or community requires that we have such a system and almost no one knows about what we do. To our knowledge, most legal aid offices do not have a program resembling that of the Center. The Center's unique program is, in many ways, a source of morale and pride for staff, but the absence of an external demand for quality or validation of quality efforts also leaves the program at risk. If Center commitment waivers, or mangers are distracted by other demands, systems will erode and so may results.

External expectations and demands would counter-balance such tendencies, reinforce and legitimate quality processes, and produce higher visibility and recognition of achievements. They would help maintain internal focus and vigilance. Valuable lessons

[36] We are interested, for example, in the role of model clients, what in US medicine are termed "standardized" patients (or clients) in quality assurance programs. We are also exploring the potential of an "aftercare" unit that inquires at 6 months and a year post service whether, e.g. tenants successful in winning possession have kept it; whether public benefits obtained have been retained.

from other's experience are lost because there is no structure for circulating best practices and exchanging information. Moreover, funder support and dollars are required for quality infrastructure such as technology, for training and materials, and for the type of quality support systems identified above.[37]

Critical policy issues for a comprehensive civil delivery system must be resolved at a systemic level. For example, what level of quality should legal aid programs aim for? Corporate quality (whatever that means) seems extravagant and likely not needed for the vast number of well known case types in familiar practice areas. Without a common case data base and common outcome reports it will not be possible to compare various approaches to staffing, training, mentoring and other practice system and resource allocation issues. For practical reasons as well, a case data system should integrate funder and provider needs. Given the difficulty in motivating practicing lawyers to produce information for use in their own office, it would be a daunting task, and wasteful, to require that providers to produce a different data set for funders. While local office data needs might be more detailed, they should expand from funder data requirements and be part of an integrated system.

The challenge is not to recognize the necessity of provider-funder integration in key areas or to imagine the positive synergies that might emerge from provider-funder links, but to figure out how to make it happen. The potential for mistrust on the provider side is great, and the possibility of inflexibility and limited understanding of provider needs and problems on the funder side is real. Moreover, in countries with mature legal aid systems, there is almost certainly a history of conflicts and disagreements that will inform the prospects for effective collaboration. For example, in the United States, with its staff model and under 200 funded providers, one would imagine that implementation of an improved case reporting system or specification of basic quality indicators would be challenging to develop but straightforward to implement. However, the history of provider autonomy and mistrust of Washington initiatives suggest that there would be great

[37] Because Harvard law School is committed to a quality practice environment for student practice experience and because it has the capacity, these needs have been met at the Hale and Dorr Center.

difficulty with implementation. Prospects for organized field reluctance, even resistance, would be high and for willing compliance rather dim. In judicare systems, the number of providers alone makes needed system wide data collection and monitoring of quality indicators a very complex undertaking.

If it is not possible, at least initially, to make progress program wide, the Center's experience suggests another approach. Funders might establish "Lab Offices" either by agreement with an existing program or via new funding. Lab Offices would be fully and realistically functioning legal aid offices funded to provide maximum transparency of process, systems and outcomes. Lab Offices could be test sites for approaches to data collection, technology configurations, alternative approaches to service delivery (lawyer, paralegal, pro se assistance), and for validation of quality indicators. Case management software could be beta tested as could other technology based approaches to cost saving. Lab Offices might be sites for funder-generated experiments with model clients, peer review, external evaluation teams or the efficacy of various staffing arrangements. They could be a source of productivity benchmarks that other programs would be challenged to meet and exceed. Recent law school graduates might undertake fellowships in Lab Offices as preparation for line legal services programs.

Lab offices would allow funders to learn about and work through system design and function glitches in a hospitable setting, and to develop a staff experienced in and supportive of the new approaches. Both the lessons learned and the staff expertise could then be exported to a second group of programs, and then a third until a significant number had implemented the new approaches. In this process, resistance by more sceptical providers may begin to subside, especially if early users are positive. Such an approach might increase the likelihood of eventual program wide implementation and, more important, of genuine investment and acceptance by providers.

Conclusion

In the United States, assurance of quality for dollar spent seems an indispensable ingredient in breaking the funding logjam that has plagued the legal services program since 1980. From a less instrumental perspective, all who care about equal access to justice should be able to affirm, with confidence, that the services offered to every client are of high quality and appropriate to that client's legal needs. Concern for all who need services, but are not reached by the present system, mandate that the notion of quality incorporate concerns for efficiency and cost-effectiveness. At the present time, we can be confident of neither the professional quality nor the cost-effectiveness of service provision. Perhaps a drive for quality, in this broader sense, will be the fourth wave in the international legal services movement.[38] If not, it should be.

[38] Paterson and Sherr, *supra,* at 24, p.

APPENDIX

Assessment Scale for Clinical Instructor Performance Evaluations

at the Hale and Dorr Legal Services Center

The following sets out the scale used in Clinical Instructor Performance Evaluations at the Center. Staff have different views on the concept of using a shorthand device like this scale, but its continued use is based on management's judgment that, *with supporting commentary and examples,* it tends to force specific self and peer assessment..

Things to remember about the scale:

- The scale does not include a level for unsatisfactory performance such that service to clients or student leaning might be compromised. Such a situation is rare here and requires immediate attention and action to protect clients and students. The scale assumes functioning above this level. Therefore, a "1" really means "Needs Improvement" to reach LSC standards. It does not mean unprofessional or unsatisfactory work.

- The scale should be applied conservatively in peer and self-assessments to assure that the performance evaluation process accurately identifies areas for growth and improvement. In other words, every effort is made in the performance evaluation process to guard against "grade inflation".

- The scale includes very high levels of performance that CI staff are unlikely to achieve in all areas. For those staff with less years of practice and teaching experience it is important to remember that performance at levels 4 and 5 *requires substantial experience.* It is not something to expect of yourself in your first 4-5 years of practice or first year or two of clinical teaching. These very high performance levels are included in the scale to remind us all, even the most experienced, that there is room for improvement and growth.

- Goals for individuals should be the Very Good/High Professional Standards (3) range, with aspects of work in the Excellent/Creative (4) range.

- To serve its intended purpose, it is important that all Clinical Instructor staff be clear on what the scale levels mean. Therefore, the following sets out definitions of each scale level.

CI Performance Evaluation Scale Effective for 1996-97

NEEDS IMPROVEMENT (1-2) - Less than adequate (per LSC standards); prompt attention needed; plan for improvement should be worked out with review dates and goals. This scale level is not an indication that client work is at risk. It does indicate that performance is not at an LSC acceptable level, which is higher than a minimal professional standard.

ADEQUATE/GOOD(3-5) - Meets LSC professional standards, which are reasonably high; full and consistent compliance with office standards, policies and routines; consistently meets deadlines and performs all basic parts of the job well

VERY GOOD/HIGH PROFESSIONAL STANDARDS (6-8) - Meets high professional standards; good self-assessment abilities; initiates self-improvement and further learning and growth; assists co-workers to improve their performance; is a model for new staff; makes positive contributions to office and program

CREATIVE/EXCELLENT (9-11) - Practice expertise and capacities recognized and acknowledged by peers at LSC and in local practice and teaching community; finds new and better ways to carry out practice and teaching roles; understands long run goals and objectives of program and contributes to these; effectively presents and represents Center's model of practice and clinical education within HLS and in professional settings outside HLS

MASTERY/EXPERT (12) - Recognized in field as an expert in teaching and practice; fully independent self-learner; handles highest difficulty cases effectively and efficiently; could step in to cover classroom components of skills courses; fully conversant in policy and substantive courses related to field of practice; makes regular contributions to achieving and advancing long run office and program goals; highly effective initiator and collaborator

INSUFFICIENT OR NO BASIS FOR ASSESSMENT (NB) – too little information or examples to assess

DOES NOT APPLY (NA)

Scale9/97